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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/368,776 01/03/95 CIOSEK

18N1/0402

LYON & LYON  
611 WEST SIXTH STREET  
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T	EXAMINER SCHEINERST
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ART UNIT	PAPER NUMBER
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1806

DATE MAILED: 04/02/96

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ Restriction/Election Only

☐ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire \_\_\_\_\_ month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152.       |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-15 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-15 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

**Part III DETAILED ACTION**

***Election/Restriction***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

Group I. Claims 1-4, drawn to isolated nucleic acids encoding MDK1 polypeptides, recombinant nucleic acids encoding MDK1 polypeptides and vectors, nucleic acid probes (note that claim 2 recites a "nucleic acid probe for the detection of MDK1 polypeptide," but MDK1 does not appear to be a nucleic acid binding protein, so it is assumed for purposes of this restriction requirement that a probe for detection of nucleic acid encoding MDK1 is intended), classified in Class 536, subclasses 23.1 and 24.31.

Group II. Claim 5, drawn to the MDK1 polypeptide, classified in Class 530, subclass 350.

Group III. Claims 6 and 7, drawn to antibodies specific for MDK1 and hybridomas secreting anti-MDK1 antibodies, classified in Class 530, subclass 387.9 and Class 435, subclass 240.27.

Group IV. Claims 8 and 10-14, drawn to assays for detection of MDK1 binding partners and detection of compounds capable of affecting the binding interactions of MDK1, classified in Class 436, subclass 501.

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Group V. Claim 9, drawn to a therapeutic method, classified in Class 424, subclass 184.1.

Group VI. Claim 15, drawn to a diagnostic method, classified in Class 435, subclass 7.23.

The inventions are distinct, each from the other because of the following reasons:

Groups IV, V and VI represent separate and distinct methods, with different reagents, protocols and outcomes. Similarly, Groups I, II and III represent chemically distinct substances, none of which are specifically required in the methods of Groups IV, V or VI. Moreover, the search for any one of the groups is not required for any of the other groups.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, as shown by their different classification, restriction for examination purposes as indicated is proper.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. § 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a diligently-filed petition

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under 37 C.F.R. § 1.48(b) and by the fee required under 37 C.F.R. § 1.17(h).

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni R. Scheiner whose telephone number is (703) 308-3983.

TRS  
3/31/96



TONI R. SCHEINER  
PRIMARY EXAMINER  
GROUP 1800